IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3572 of 2003

Between:

Tulasi Metal Suppliers,

Rep. By K.Narayana Rao, partner

S/o Kotaiah, aged about 39 years,

Vankayalapadu, Guntur District.

..... PETITIONER

AND

1. The Commercial Tax Officer,

(FAC), Chilkaluripet,

Guntur District.

2. The Deputy Commercial Tax Officer,

Ganapavaram.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Writ of Mandamus declaring the revised proceedings of the Commercial Tax Officer, (FAC), Chilakaluripet in revision in Gl.No.12297/99-2000, dated 3.12.2002 holding that Section 5 and 5F of the Andhra Pradesh General Sales Tax Act are different and distinct and the deemed sale of stone chips under Section 5F of the Act is not a sale in the series of sales, as illegal, arbitrary, unjust, improper and discriminatory, violating articles 14 and 19(1)(g) of the Constitution of India as also in contravention of the law laid down by the Honourable Supreme Court in 73 STC page 370, and 88 STC page 204 violating article 141 of the Constitution of India and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondents: SPL GP FOR TAXES

The Court made the following ORDER: (per BN,J)

This writ petition is filed by the petitioner on 26-02-2003 challenging the assessment under revision dated 03-12-2002. Counter affidavit has been filed, in which, it is stated that against the same order, the petitioner filed an appeal before the Appellate Deputy Commissioner(CT), Guntur and on scrutiny of the appeal, the office of the Appellate Deputy Commissioner(CT), Guntur, found that the petitioner had not paid the requisite institution fee for entertaining the appeal. Therefore, the Appellate Deputy Commissioner (CT), Guntur, issued a memo to the petitioner on 28-01-2003 to deposit the requisite amount within seven (7) days. The said amount was not deposited. Therefore, the Appellate Deputy Commissioner (CT), Guntur, dismissed the appeal on

24-02-2003. This fact was not disclosed in the writ affidavit that an appeal had been filed, which had been dismissed for non-payment of requisite institution fee. Even otherwise, the order impugned is appealable and in fact, an appeal was filed after dismissal of the appeal and by suppressing that information, this writ petition has been filed. For these reasons, the writ petition deserves to be dismissed.

The writ petition is accordingly dismissed. No costs.

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(BILAL NAZKI, J)

11th OCTOBER, 2004.

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(S.ANANDA REDDY, J)

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To

1. The Commercial Tax Officer,

(FAC), Chilkaluripet,

Guntur District.

2. The Deputy Commercial Tax Officer,

Ganapavaram.

3 Two CCs to the Special Government Pleader for Taxes, A.P.High Court Buildings, Hyderabad (OUT).

4 Two CD copies.